

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

CHEVRON MINING INC.,

Plaintiff,

vs.

UNITED STATES OF AMERICA, et al.,

Defendants.

No. 1:13-cv-00328-PJK-JFR

MINUTE ORDER

At the Direction of the Hon. Paul J. Kelly, Jr.:

The court acknowledges Plaintiff's Objections to the United States' Notice Regarding the Need for Trial Subpoenas filed October 12, 2021 (ECF No. 226), after the court confirmed that trial subpoenas may be issued for David Shoemaker and Paul LaCome and that they may be called during the United States' case-in-chief. Order filed October 12, 2021 (ECF No. 225). The court has considered the arguments. Though the court certainly envisions that most of the direct testimony will be based on pre-filed direct, given a showing of particularized need, the court does not read the CMO as precluding live direct in every circumstance. Indeed, at an earlier status conference, the court discussed exploring alternative arrangements that might be necessary. ECF No. 215 at 2–3. Here, Chevron has not listed the two witnesses in question as trial witnesses

or filed direct testimony from them. The court is concerned that a party not be allowed to preclude relevant testimony from adverse fact witnesses under an opposing party's control, restricting that party to previously filed deposition testimony that may not be sufficient. Chevron is free to request the same for similar situations. While the court would hope that the parties could work these matters out, such requests should come in the form of an opposed motion or a joint motion. The court reaffirms its prior order.

/s/MITCHELL R. ELFERS
Clerk of Court